

US DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, DC

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IN THE MATTER OF

DHL AIRWAYS, INC.

DOCKET NO. OST-2002-13089 -266  
(Citizenship Proceeding)

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**ORDER OF CHIEF ADMINISTRATIVE LAW JUDGE**

13089-35

By "Motion to Compel" dated July 1, 2003, Federal Express Corporation ("FedEx") sought to compel Deutsche Bank AG ("Deutsche Bank") to comply with a subpoena issued by the Judge on June 18, 2003, at the request of FedEx, for the production of documents.<sup>1</sup> The subpoena requires Deutsche Bank to produce various documents<sup>2</sup> concerning, *inter alia*, the Dasburg Transaction,<sup>3</sup> the Merger Agreement,<sup>4</sup> the Broker Agreement,<sup>5</sup> the Financing Documents,<sup>6</sup> the Other Documents,<sup>7</sup> and the DHL Entities.<sup>8</sup> FedEx asserts that "no documents or other objects have been produced by

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<sup>1</sup> Motion to Compel, at 1.

<sup>2</sup> See Attachment to Subpoena, at 3-4, attached to Application to the Chief Administrative Law Judge for the Issuance of a Subpoena for Documents and Things, dated June 17, 2003.

<sup>3</sup> According to the Attachment to Subpoena, "'Dasburg Transaction' shall mean any transaction or series of transactions whereby BD Air Partners (including any of its members) acquires a controlling interest in DHLA, whether through consummation of the Merger Agreement or otherwise." Attachment to Subpoena, at 1.

<sup>4</sup> According to the Attachment to Subpoena, "'Merger Agreement' shall mean the Agreement and Plan of Merger, dated May 20, 2003, including the Exhibits and Schedules thereto, by and among DHLA, DHL Holdings, William A. Robinson ('Robinson'), BDAP Acquisition Corporation ('BDAP') and BD Air Partners, and all amendments, modifications and supplements thereto and restatements thereof." Attachment to Subpoena, at 2.

<sup>5</sup> According to the Attachment to Subpoena, "'Broker Agreement' shall mean any agreements, whether written or oral, between DB and any DHL Entities entered into in connection with the Dasburg Transaction or the Merger Agreement, including any exhibits and schedules thereto, and all amendments, modifications and supplements thereto and restatements thereof." Attachment to Subpoena, at 1.

<sup>6</sup> According to the Attachment to Subpoena, "'Financing Documents' shall mean any financing documents, including but not limited to leases, participation agreements, loan agreements, credit facilities, guarantees and security documents, executed by any of the DHL Entities." Attachment to Subpoena, at 1.

Deutsche Bank” and argues that “the Subpoena seeks documents highly relevant to this proceeding and is reasonable in scope.”<sup>9</sup>

By “Response of Deutsche Bank AG to Motion to Compel and Motion to Quash or, in the Alternative, for a Protective Order” (“Response”), dated July 7, 2003, Deutsche Bank requests that “the parties be given until July 17 to resolve this matter by agreement and that the Chief Judge enter and continue this matter until that date,” and agrees that it will advise the Judge of the results of its discussions with FedEx on this matter.<sup>10</sup> We take this request as a motion to continue the subpoena and FedEx’s Motion to Compel. Deutsche Bank states that if the Judge considers the Motion to Compel, it should be denied and the subpoena should be quashed.<sup>11</sup> If the subpoena is not quashed, Deutsche Bank requests that a protective order be issued.<sup>12</sup>

On July 10, 2003, FedEx filed a “Motion of Federal Express Corporation to Continue its Motion to Compel (Deutsche Bank) and to Extend Answer Period” (“Motion

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<sup>7</sup> According to the Attachment to Subpoena, “‘Other Documents’ shall mean any documents, including but not limited to documents referred to in the Merger Agreement and the Financing Documents, other than the Broker Agreement and the Financing Documents, executed in connection with any financing by any of the DHL Entities.” Attachment to Subpoena, at 2.

<sup>8</sup> According to the Attachment to Subpoena, “‘DHL Network’ or ‘DHL Entities’ shall mean DHLA, DHL Holdings (U.S.A.), Inc. (‘DHL Holdings’), DHL Worldwide Express, Inc. (‘DHL Worldwide’), DHL Worldwide Express BV, DHL Worldwide Express NV, DHL International Limited, Deutsche Post AG, Kreditanstalt für Wiederaufbau (KfW) and their predecessors, subsidiaries, affiliates, related companies, joint ventures and all their officers, directors, employees, agents, contractors, accountants, advisors, attorneys, representatives, successors or assigns and all other persons acting or purporting to act on their behalf.” Attachment to Subpoena, at 1.

<sup>9</sup> Motion to Compel, at ¶¶ 2, 5. According to FedEx and UPS, the material is relevant “because it pertains to [Deutsche Bank’s] involvement as a broker or agent to the Sellers (as defined in the Attachment to the June 17 Application for Subpoena) and DHLA in connection with the proposed Dasburg Transaction . . . and in certain financing arrangements between Deutsche Bank, DHLA and certain affiliates of DHLA.” *Id.* at ¶ 5. Further, UPS and FedEx state that the requests are reasonable in scope because “the requested documents are identified with particularity, and relate only to the Dasburg Transaction and the financing arrangements between Deutsche Bank and DHLA and affiliated entities.” *Id.* at ¶6.

<sup>10</sup> Response, at 2.

<sup>11</sup> *See* Response, at 3, 4. According to Deutsche Bank, the Motion to Compel should be denied because “among other things, the Subpoena is unreasonable, overly broad and unduly burdensome and the Subpoena seeks commercially sensitive and proprietary information belonging to Deutsche Bank.” *Id.* at 2 (footnote omitted).

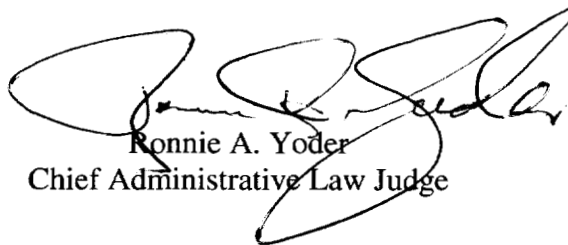
<sup>12</sup> *See* Response, at 4. Deutsche Bank requests that if the subpoena is not quashed, “a protective order should be issued maintaining the confidentiality of documents otherwise exempt from disclosure under the Freedom of Information Act.” *Id.* at 4. The Freedom of Information Act does not control confidentiality in these proceedings. Rule 12 of the Department’s Rules of Practice (14 C.F.R. § 302.14) establishes a procedure by which “Any person who objects to the public disclosure of any information filed in any proceeding, or pursuant to . . . any Department rule, regulation, or order” may file a motion to withhold that information from public disclosure. *See* Order of Chief Administrative Law Judge, served May 7, 2003, at 5; Order of Chief Administrative Law Judge 13089-32, served July 14, 2003, at 3.

to Continue”), requesting that the Judge continue its Motion to Compel to July 14, 2003, so FedEx and Deutsche Bank can “determine whether they can agree upon documents to produce and a schedule by which to produce them.”<sup>13</sup> According to FedEx, “if the parties are unable to reach an agreement, FedEx will respond to [Deutsche Bank’s] Response, its Motion to Quash, and its alternative Motion for a Protective Order, on or before July 15, 2003.”<sup>14</sup>

We take Deutsche Bank’s and FedEx’s Motions to Continue as requests that we defer rulings on FedEx’s Motion to Compel and Deutsche Bank’s Response until a filing is made indicating whether an agreement has been reached. Thus, FedEx’s Motion to Continue effectively asks for the same relief as Deutsche Bank’s Response.

Upon Deutsche Bank’s and FedEx’s requests, the subpoena and any answer to Deutsche Bank’s Response are continued until July 17, 2003.

**SO ORDERED.**



Ronnie A. Yoder  
Chief Administrative Law Judge

Attachment - Service List

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<sup>13</sup> Motion to Continue, at 2.

<sup>14</sup> Motion to Continue, at 2.

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